

UNITED STATES DISTRICT COURT
COMMONWEALTH OF MASSACHUSETTS

TRANS-SPEC TRUCK SERVICE, INC.)
d/b/a/ TRUCK SERVICE,)
Plaintiff)

v.)

CATERPILLAR INC.,)
Defendant)

Civil Action
No. 04-11836-RCL

DAY TWO OF THE AUDIOVISUAL DEPOSITION of
JOSEPH M. HOWARD, JR., a witness called on behalf of the
Defendant, taken pursuant to the Massachusetts Rules
of Civil Procedure, before Ellen Dubie, a Professional
Court Reporter and Notary Public in and for the
Commonwealth of Massachusetts, at the Offices of
CAMPBELL CAMPBELL EDWARDS & CONROY, P.C.,
One Constitution Plaza, Boston, Massachusetts, on
Wednesday, SEPTEMBER 28, 2005, commencing at 10:00 a.m.

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1 happened again, you know that we'd certainly be in
2 trouble.

3 Q. Sure. Do you remember, other than damage to the
4 fifth wheel, whether there was any other damage to
5 Truck 8400 as a result of that event?

6 A. I don't remember, but I wouldn't think so. We've
7 had that happen before. Right on our own property it
8 generally happens. A truck can't hook up, the driver
9 pulls out, the trailer falls down.

10 Q. Let me show you Exhibits 5 and 6 to your
11 individual deposition which was taken in May of this
12 year. Did Trans-Spec receive copies of either of
13 those documents in connection with its acquisition of
14 the Sterling Trucks?

15 A. Yes.

16 (Witness reviews documents.)

17 Q. Did it receive both of them? Let me rephrase --
18 let me ask the question a little differently.

19 Trans-Spec received some of the Sterling
20 Trucks in December 1999; right?

21 A. Yes.

22 Q. And it received some of the trucks in
23 January 2000; correct?

24 A. Yes.

1 Q. And Exhibits 5 and 6 on their face, one of them
2 pertains to engines delivered before January 2000, and
3 the other pertains to ones delivered after January
4 2000 or in and after January 2000; correct?

5 A. This is just No. 5.

6 Q. No, they're five and six. One of them pertains
7 to deliveries I believe made after 1997, and one of
8 them pertains to deliveries made after January 1,
9 2000; correct?

10 A. Yes.

11 Q. Did Trans-Spec receive the document that was
12 marked Exhibit 5 which is effective with sales to the
13 first user on or after January 1, 1997? Did it
14 receive that document or a copy of it with the
15 Sterling Trucks that it took delivery of in December
16 1999?

17 A. I believe it did.

18 Q. And the Exhibit 6 which pertains to sales to the
19 first user after January 1, 2000, did it receive a
20 copy of that with the Sterling Trucks that it took
21 delivery of in January 2000?

22 A. I believe it did.

23 Q. Other than Exhibits 5, 6, and 3 to your
24 individual deposition back in May, and I'm showing you

EXHIBIT

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J. Howard 5/3/05

CATERPILLAR LIMITED WARRANTY

New 3406, C-12, C-10, 3176 and 3306 Engines Powering On-Highway Vehicles

Effective with sales to the first user on or after January 1, 1997

Worldwide

("excluding the Commonwealth of Independent States")

Caterpillar Inc. and any of its subsidiaries ("Caterpillar"), through its New 3406, C-12, C-10, 3176 and 3306 engines sold to users in power and on-highway vehicles, and operating in the Commonwealth of Independent States (formerly known as the Soviet Union), hereby warrants that the engines to be free from defects in material and workmanship. This warranty, however, applies to product operating in the Commonwealth of Independent States. Copies of this warranty may be obtained by mail from Caterpillar Inc., 100 N. Second St., Peoria, IL 61656-3345.

Many states have the following:

Warranty Period

Standard warranty period for new engines powering on-highway vehicles, other than those powering recreational vehicles, trucks for crash-rescue vehicles (including emergency service vehicles and ambulances), is 24 months or 200,000 miles (320,000 kilometers), whichever comes first after delivery to the first user.

Standard warranty period for new engines powering on-highway vehicles, other than those powering recreational vehicles, trucks for crash-rescue vehicles (including emergency service vehicles and ambulances), is 24 months or 200,000 miles (320,000 kilometers), whichever comes first after delivery to the first user.

Excluded Warranty

Standard warranty period for new engines powering on-highway vehicles, other than those powering recreational vehicles, trucks for crash-rescue vehicles (including emergency service vehicles and ambulances), is 24 months or 200,000 miles (320,000 kilometers), whichever comes first after delivery to the first user. This warranty does not apply to the following components: cylinder block and crankshaft, connecting rod assemblies, cylinder head, camshaft, timing bearing, bolts, flywheel, oil pan, oil pump, water pump, fueling, air intake, electronic control module and personality module. This warranty does not cover defects in material and workmanship or 200,000 miles (320,000 kilometers) or 24 months, whichever comes first after date of delivery to the first user. This warranty is concurrently with the standard warranty period.

Caterpillar Responsibilities

If a defect in material or workmanship is found during the standard warranty period, Caterpillar will, during normal working hours and through a place of business of a Caterpillar dealer or other source approved by Caterpillar:

- Provide (at Caterpillar's choice) new, remanufactured or Caterpillar-approved repaired parts or assembled components needed to correct the defect.
- Replace lubricating oil, filters, antifreeze and other service items made unusable by the defect.
- Provide reasonable or customary labor needed to correct the defect, including labor for removal and installation when necessary to make the repair.
- Provide reasonable or customary towing to the nearest authorized repair facility or reasonable travel expenses from the nearest authorized repair facility, if the vehicle is inoperable or continued operation would result in additional engine damage.

If a defect in material or workmanship is found during the extended warranty period, Caterpillar will, during normal working hours and at a place of business of a Caterpillar dealer or other source approved by Caterpillar:

- Provide (at Caterpillar's choice) new, remanufactured, or Caterpillar-approved repaired parts or assembled components needed to correct the defect.

Note: Items replaced under warranty become the property of Caterpillar.

User Responsibilities

During the standard warranty period, the user is responsible for:

- Providing proof of the delivery date to the first user.
- Labor costs, except as stated under "Caterpillar Responsibilities".
- Travel or transporting costs, except as stated under "Caterpillar Responsibilities/Limitations".
- Premium or overtime labor costs.

Parts shipping charges in excess of those which are usual and customary.

Local taxes, if applicable.

- Costs to investigate complaints, unless the problem is caused by a defect in Caterpillar material or workmanship.
- Giving timely notice of a warrantable failure and promptly making the product available for repair.

Performance of the required maintenance and use of proper fuel, oil, lubricants and coolant.

- For electronically-controlled engines, allow Caterpillar access to all electronic data stored in the Electronic Control Module.

During the extended warranty period, the user is responsible for:

- Providing proof of the delivery date to the first user.
- All costs except for replacement parts or assembled components as specified.
- Giving timely notice of a warrantable failure and promptly making the product available for repair.
- Performance of the required maintenance and use of proper fuel, oil, lubricants and coolant.

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Limitations

Caterpillar is not responsible for:

- Failures resulting from any use or installation which Caterpillar judges improper.
- Failures resulting from attachments, accessory items and parts not sold or approved by Caterpillar.
- Failures resulting from abuse, neglect and/or improper repair.

- Failures resulting from user's delay in making the product available after being notified of a potential product problem.
- Failures resulting from unauthorized repair or adjustments, and unauthorized fuel setting changes.
- Repair or replacement of unit injectors or nozzles after 150,000 miles (243,000 kilometers).
- Repair or replacement of water pump seals or thermostats after 200,000 miles (325,000 kilometers).

- Repair of auxiliary braking devices not manufactured by Caterpillar. Such devices are warranted by their manufacturer. For product operating in the Middle East, Africa and China, certain limitations may apply to towing and/or travel expenses based on geographic location and proximity to the nearest authorized repair facility. Contact your nearest authorized repair facility to determine if these limitations apply.

For products operating outside of Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands and Tahiti, the following is applicable:

NEITHER THE FOREGOING EXPRESS WARRANTY NOR ANY OTHER WARRANTY BY CATERPILLAR, EXPRESS OR IMPLIED, IS APPLICABLE TO ANY ITEM CATERPILLAR SELLS WHICH IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT CATERPILLAR EMISSION-RELATED COMPONENTS WARRANTIES FOR NEW ENGINES, WHERE APPLICABLE. REMEDIES UNDER THIS WARRANTY ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES, AS SPECIFIED HEREIN. CATERPILLAR IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

CATERPILLAR EXCLUDES ALL LIABILITY FOR OR ARISING FROM ANY NEGLIGENCE ON ITS PART OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES IN RESPECT OF THE MANUFACTURE OR SUPPLY OF GOODS OR THE PROVISION OF SERVICES RELATING TO THE GOODS.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION (CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS) IS EXCLUDED IN ITS ENTIRETY.

For personal or family use engines operating in the USA, its territories and possessions, some states do not allow limitations on how long an implied warranty may last nor allow the exclusion or limitation of incidental or consequential damages. Therefore, the previously expressed exclusion may not apply to you.

This warranty gives you specific legal rights and you may also have other rights which vary by jurisdiction. To find the location of the nearest Caterpillar dealer or other authorized repair facility call (800) 447-4986. If you have questions concerning this warranty or its applications, call or write: In USA and Canada: Caterpillar Inc. Engine Division, P. O. Box 610, Mossville, IL 61552-0610. Attention: Customer Service Manager, Telephone (800) 447-4986. Outside the USA and Canada: Contact your Caterpillar dealer.

For products operating in Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands and Tahiti, the following is applicable:

THIS WARRANTY IS IN ADDITION TO WARRANTIES AND CONDITIONS IMPLIED BY STATUTE AND OTHER STATUTORY RIGHTS AND OBLIGATIONS THAT BY ANY APPLICABLE LAW CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED ("MANDATORY RIGHTS"). ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED (BY STATUTE OR OTHERWISE), ARE EXCLUDED.

NEITHER THIS WARRANTY NOR ANY OTHER CONDITION OR WARRANTY BY CATERPILLAR, EXPRESS OR IMPLIED (SUBJECT ONLY TO THE MANDATORY RIGHTS), IS APPLICABLE TO ANY ITEM CATERPILLAR SELLS WHICH IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER.

TO THE EXTENT PERMITTED UNDER THE MANDATORY RIGHTS, IF CATERPILLAR IS THE SUPPLIER TO THE USER, CATERPILLAR'S LIABILITY SHALL BE LIMITED AT ITS OPTION TO (a) IN THE CASE OF SERVICES, THE SUPPLY OF THE SERVICES AGAIN OR THE PAYMENT OF THE COST OF HAVING THE SERVICES SUPPLIED AGAIN, AND (b) IN THE CASE OF GOODS, THE REPAIR OR REPLACEMENT OF THE GOODS, THE SUPPLY OF EQUIVALENT GOODS, THE PAYMENT OF THE COST OF SUCH REPAIR OR REPLACEMENT OR THE ACQUISITION OF EQUIVALENT GOODS.

CATERPILLAR EXCLUDES ALL LIABILITY FOR OR ARISING FROM ANY NEGLIGENCE ON ITS PART OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES IN RESPECT OF THE MANUFACTURE OR SUPPLY OF GOODS OR THE PROVISION OF SERVICES RELATING TO THE GOODS.

CATERPILLAR IS NOT LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNLESS IMPOSED UNDER MANDATORY RIGHTS.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION (CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS) IS EXCLUDED IN ITS ENTIRETY.

This warranty covers every major component of the products. Claims under this warranty should be submitted to a place of business of a Caterpillar dealer or other source approved by Caterpillar. For further information concerning either the location to submit claims or Caterpillar as the issuer of this warranty, write Caterpillar Inc., 100 N. E. Adams St., Peoria, IL USA 61629-3345, or its subsidiary, Caterpillar of Australia Ltd., 1 Caterpillar Drive, Private Mail Bag 4, Tullamarine, Victoria 3043, Australia.

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EXHIBIT

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F. Howard 5/3/05

Effective with sales to the first user on or after January 1, 2000

CATERPILLAR LIMITED WARRANTY

New C-16, C-15, C-12, and C-10 Engines Powering On-Highway Vehicles Worldwide*

(*excluding Commonwealth of Independent States)

Caterpillar Inc. or any of its subsidiaries ("Caterpillar") warrants new C-16, C-15, C-12, and C-10 engines sold by it for use in powering on-highway vehicles, and operating outside the Commonwealth of Independent States (formerly USSR), to be free from defects in material and workmanship.

A different warranty statement applies to product operating in the Commonwealth of Independent States. Copies of this warranty may be obtained by writing Caterpillar Inc., 100 N. E. Adams St., Peoria, IL 61629-3345.

This warranty is subject to the following:

Warranty Period

The *standard warranty period* for new engines powering on-highway vehicles, other than those powering recreational vehicles, fire trucks, emergency service vehicles and ambulances, is 24 months after date of delivery to the first user.

The *standard warranty period* for new engines powering recreational vehicles, fire trucks, emergency service vehicles and ambulances, is 60 months or 200,000 miles (321,869 kilometers), whichever occurs first after date of delivery to the first user.

Extended Warranty

An *extended warranty period* applies to new engines powering on-highway vehicles (other than those powering recreational vehicles, fire trucks, emergency service vehicles and ambulances) and applies solely to the following components: cylinder block casting, crankshaft, connecting rod assemblies, cylinder head

casting, camshaft, main bearing bolts, flywheel housing, oil cooler housing, water pump housing, air intake housing, and electronic control module.

These parts are warranted against defects in material and workmanship for 60 months or 500,000 miles (804,672 kilometers) or 10,000 operating hours, whichever occurs first after date of delivery to the first user. This warranty runs concurrently with the standard warranty period.

Caterpillar Responsibilities

If a defect in material or workmanship is found during the *standard warranty period*, Caterpillar will, during normal working hours and through a place of business of a Caterpillar dealer or other source approved by Caterpillar:

w Provide (at Caterpillar's choice) new, Remanufactured or Caterpillar-approved repaired parts or assembled components needed to correct the defect.

w Replace lubricating oil, filters, coolant and other service items made unusable by the defect.

w Provide reasonable or customary labor needed to correct the defect, including labor for removal and installation when necessary to make the repair.

w Provide reasonable or customary towing to the nearest authorized repair facility or reasonable travel expenses from the nearest authorized repair facility, if the vehicle is inoperable or continued operation would result in additional engine damage.

If a defect in material or workmanship is found during the *extended warranty period*, Caterpillar will, during normal working hours and at a place of business of a Caterpillar dealer or other source approved by Caterpillar:

w Provide (at Caterpillar's choice) new, Remanufactured, or Caterpillar-approved repaired parts or assembled components needed to correct the defect.

Note: Items replaced under warranty become the property of Caterpillar.

User Responsibilities

During the *standard warranty period*, the user is responsible for:

w Providing proof of the delivery date to the first user.

w Labor costs, except as stated under "Caterpillar Responsibilities".

w Travel or transporting costs, except as stated under "Caterpillar Responsibilities/Limitations".

w Premium or overtime labor costs.

w Parts shipping charges in excess of those which are usual and customary.

w Local taxes, if applicable.

w Costs to investigate complaints, unless the problem is caused by a defect in Caterpillar material or workmanship.

w Giving timely notice of a warrantable failure and promptly making the product available for repair.

w Performance of required maintenance (including use of proper fuel, oil, filters, lubricants and coolant) and items replaced due to normal wear and tear.

w Allowing Caterpillar access to all electronically stored data.

During the *extended warranty period*, the user is responsible for:

w Providing proof of the delivery date to the first user.

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- w All costs except for replacement parts or assembled components as specified.
- w Giving timely notice of a warrantable failure and promptly making the product available for repair.
- w Performance of required maintenance (including use of proper fuel, oil, filters, lubricants and coolant) and items replaced due to normal wear and tear.

Limitations

Caterpillar is not responsible for:

- w Failures resulting from any use or installation which Caterpillar judges improper.

- w Failures resulting from attachments, accessory items and parts not sold or approved by Caterpillar.
- w Failures resulting from abuse, neglect and/or improper repair.
- w Failures resulting from user's delay in making the product available after being notified of a potential product problem.
- w Failures resulting from unauthorized repair or adjustments.
- w Repair or replacement of unit injectors after 150,000 miles (241,402 kilometers).

- w Repair or replacement of water pump seals or thermostats after 200,000 miles (321,869 kilometers).
- w Repair of auxiliary braking devices not manufactured by Caterpillar. Such devices are warranted by their manufacturer.

For product operating in the Middle East, Africa, and within the territories administered by Caterpillar S.A.R.L., Singapore Branch, and Caterpillar China Limited dealers, certain limitations may apply to towing and/or travel expenses based on geographic location and proximity to the nearest authorized repair facility. Contact your nearest authorized repair facility to determine if these limitations apply.

For products operating outside of Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands and Tahiti, the following is applicable:

NEITHER THE FOREGOING EXPRESS WARRANTY NOR ANY OTHER WARRANTY BY CATERPILLAR, EXPRESS OR IMPLIED, IS APPLICABLE TO ANY ITEM CATERPILLAR SELLS WHICH IS WARRANTED DIRECTLY TO THE USER BY ITS MANUFACTURER.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT CATERPILLAR EMISSION-RELATED COMPONENTS WARRANTIES FOR NEW ENGINES, WHERE APPLICABLE. REMEDIES UNDER THIS WARRANTY ARE LIMITED TO THE PROVISION OF MATERIAL AND SERVICES, AS SPECIFIED HEREIN. CATERPILLAR IS NOT RESPONSIBLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES.

CATERPILLAR EXCLUDES ALL LIABILITY FOR OR ARISING FROM ANY NEGLIGENCE ON ITS PART OR ON THE PART OF ANY OF ITS EMPLOYEES, AGENTS OR REPRESENTATIVES IN RESPECT OF THE MANUFACTURE OR SUPPLY OF GOODS OR THE PROVISION OF SERVICES RELATING TO THE GOODS.

IF OTHERWISE APPLICABLE, THE VIENNA CONVENTION (CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS) IS EXCLUDED IN ITS ENTIRETY.

For personal or family use engines operating in the USA, its territories and possessions, some states do not allow limitations on how long an implied warranty may last nor allow the exclusion or limitation of incidental or consequential damages. Therefore, the previously expressed exclusion may not apply to you.

This warranty gives you specific legal rights and you may also have other rights which vary by jurisdiction. To find the location of the nearest Caterpillar dealer or other authorized repair facility call (800) 447-4986. If you have questions concerning this warranty or its applications, call or write: In USA and Canada: Caterpillar Inc. Engine Division, P. O. Box 910, Mossville, IL 61552-0610, Attention: Customer Service Manager, Telephone (800) 447-4986. Outside the USA and Canada: Contact your Caterpillar dealer.

For products operating in Australia, Fiji, Nauru, New Caledonia, New Zealand, Papua New Guinea, the Solomon Islands and Tahiti, the following is applicable:

THIS WARRANTY IS IN ADDITION TO WARRANTIES AND CONDITIONS IMPLIED BY STATUTE AND OTHER STATUTORY RIGHTS AND OBLIGATIONS THAT BY ANY APPLICABLE LAW CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED ("MANDATORY RIGHTS"). ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED (BY STATUTE OR OTHERWISE), ARE EXCLUDED.

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